

104
HUMAN RIGHTS, REFUGEES, AND WAR CRIMES:
THE PROSPECTS FOR PEACE IN BOSNIA

Y 4. IN 8/16:B 65/4

Human Rights, Refugees, and War Cri...

HEARING
BEFORE THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS
FIRST SESSION

NOVEMBER 15, 1995

Printed for the use of the Committee on International Relations



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HUMAN RIGHTS, REFUGEES, AND WAR CRIMES: THE PROSPECTS FOR PEACE IN BOSNIA

WEDNESDAY, NOVEMBER 15, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The committee met, pursuant to call, at 10 a.m. in room 2172, Rayburn House Office Building, Washington, DC, the Honorable Benjamin A. Gilman presiding.

Chairman GILMAN. The hearing will come to order. Today's hearing is on the issue of human rights, refugees, and war crimes in Bosnia. The focus of attention on the conflict in Bosnia has been on the talks now under way in Dayton, Ohio, and the question of our United States troops participating in the enforcement of any peace agreement that emerges from those talks.

Regrettably, not enough attention has been paid to the human rights violations, to the refugees who have been created, to the war crimes that have been perpetrated during this conflict, and how they may affect the peace agreement.

While the talks are progressing more quickly than many had anticipated, there is a great deal of skepticism that the kind of settlement that is likely to emerge will lead to lasting peace and stability in the Balkans.

For example, more than two million people, fifty percent of Bosnia's pre-war population, have been forced from their homes. Under this settlement, they ostensibly will have the right to return or to be compensated for their property. A key question, however, will be how to enforce this so-called right.

As to the prosecution of war criminals, President Clinton has stated and I quote, "Those accused of war crimes, crimes against humanity and genocide, must be tried, and if found guilty must be held accountable."

How is a peace settlement to be implemented if those who would have to implement it on behalf of some of the parties are in fact indicted, tried, and convicted as war criminals? Finally, how does peace take hold when the victims and their victimizers are expected to live together in a divided Bosnia? The purpose of today's hearing is to pose these and other questions to our distinguished witnesses.

Before we begin, do any of our colleagues have an opening statement that they would like to make?

Mr. SMITH. Mr. Chairman.

Chairman GILMAN. Mr. Smith.

Mr. SMITH. Thank you very much, Mr. Chairman. And I want to thank you for convening this very timely and very important hearing. It raises at least three fundamental questions that are often ignored in the attention on the negotiations over peace in the former Yugoslavia and that we cannot afford to ignore if we want a lasting and a just peace.

The first question is whether the peace agreement will be based only on a perceived interest of nations, or whether it will be designed to protect God given and inalienable rights of human beings.

Concern for human rights and horror at the brutal atrocities that have been committed during the course of this war have been the primary justification for the central role that the United States has played in the peace process.

It would be ironic indeed if the agreement resulting from that process were to subordinate freedom and democracy to the balance of power or some other geopolitical abstraction.

I know that our witnesses, and particularly James O'Dea of Amnesty International, will have specific suggestions as to how such a tragedy can be avoided.

The second question is what happens to the war criminals. Bringing perpetrators of human rights violations to account for their crimes is fundamental. Not only because the victims are entitled to justice, but because this is the only meaningful deterrent to future atrocities in future wars.

The more important the war criminals, the more important it is to bring them to justice. Mr. Tom Warrick has been an articulate and diligent advocate for the war crimes tribunal of the former Yugoslavia. He has already testified before the Subcommittee on International Operations and Human Rights, which I chair, on some of the administrative and budget problems faced by the tribunal. And we look forward to his testimony today on the relationship between the tribunal and the peace process.

The final question is what happens to the many thousands of refugees produced by this war. Some of them will be able to go home. Others, whose villages have been ethnically cleansed beyond redemption, or who have been subjected to such horrors that it is simply wrong to force them back, will need to be resettled, Mr. Chairman.

And our subcommittee has also heard testimony on the refugee question. It seems clear that the United States must be more generous in its resettlement criteria. And in particular, it must not depend exclusively on UNHCR referrals for refugees in urgent need of resettlement.

In this connection, Mr. Chairman, I ask unanimous consent to insert in the record a thoughtful and important article from the New Republic by Peter and Julie Schuck on the question of U.S. and UNHCR attitudes toward the resettlement of refugees in Bosnia. I am particularly in strong agreement with the author's argument that the UNHCR must stop behaving and acting as a gate keeper, and return to its traditional role as an advocate and facilitator for refugee resettlement.

[The article appears in the appendix.]

Mr. SMITH. Finally, Mr. Chairman, I should note that Mr. Robert DeVecchi of the International Rescue Committee was out of the country at the time of our subcommittee hearings on Bosnia and refugees, and has been a tireless advocate for refugees in the former Yugoslavia and around the world. And I commend him for his tremendous work, and look forward to his testimony today as well. I yield back.

Chairman GILMAN. Thank you, Mr. Smith.

Do any of our other members having any opening statements?
[No response.]

Chairman GILMAN. Our panel includes today Robert DeVecchi, president of the International Rescue Committee; James O'Dea, director of the Washington office of Amnesty International; and Thomas Warrick, senior counsel to Cherif Bassiouni, who is the head of the U.N. Commission of Experts on the Former Yugoslavia.

Your appearance this morning, gentlemen, is particularly appreciated by our colleagues. We will begin with testimony by Mr. DeVecchi. You may submit your entire statement or a summary of your statement, whichever you prefer. We would appreciate it if you could be as brief as possible, so that our members may have an opportunity to engage you in dialog. Mr. DeVecchi.

STATEMENT OF ROBERT P. DEVECCHI, PRESIDENT, INTERNATIONAL RESCUE COMMITTEE

Mr. DEVECCHI. Thank you, Mr. Chairman. Thank you for your opening remarks.

And thank you, Congressman Smith, for your opening remarks as well. They are very much in tune and in line with my testimony.

I would like to summarize my testimony, and I have submitted the full text for the record.

Chairman GILMAN. Without objection, the full text will be included in the record.

Mr. DEVECCHI. Thank you, sir.

There is a dimension of the Yugoslav tragedy which I hope and trust will not be lost sight of as peace is painstakingly negotiated in Dayton and other areas. I am referring here to the basic human rights of the individuals concerned, be they refugees or the internally displaced.

It should not be assumed that large numbers of victims of ethnic cleansing should be either forced to return to their homes from which they were driven or involuntarily moved to new sites. There must be consideration for the rights of these individuals to have a say in their own destinies, as guaranteed under the Universal Declaration of Human Rights and the 1951 Geneva Convention on Refugees and its 1967 protocol.

If I may, let me give several specific examples. There are an estimated 630,000 refugees who have fled the conflict in the former Yugoslavia, and are presently in Western Europe. We hear of some of these refugees in Austria for example and in Scandinavia, who are being expelled or repatriated by force against their will back to their homeland with little or no consideration of what it is they have to go back to, if indeed they have anything to go back to.

My belief is that the United Nations High Commissioner for Refugees has a responsibility to exercise its protection mandate over

these refugees and intervene with the countries of Western Europe to prevent forced expulsion.

Second, in comparison to the asylum that the countries of Western Europe have provided, the United States' response in terms of offering permanent refugee resettlement to Bosnians has been cursory at best.

Less than 20,000 Bosnian refugees have been admitted to this country as refugees over the past 3 years, in spite of the urging of the refugee community and even the UNHCR and other organizations that this number be greatly expanded.

Turning to Croatia, which has been the country of first asylum for some 650,000 refugees from Bosnia, including ethnic Moslems, ethnic Croats, and mixed marriage families, there is increasing concern today that the Croatian authorities are speaking more and more about a unilateral return of those to whom it has offered temporary asylum, as the prospects for peace grow.

It is equally of concern that the Croatian authorities have become more restrictive about admitting newly created refugees from areas such as Banja Luka that continue to be ethnically cleansed.

The fundamental principle of non-refoulement, no forced or involuntary repatriation, and the right to seek asylum, and the obligation to provide protection to asylum seekers must be reinforced and adhered to.

There is as well the residual ethnic Serb population in Croatia, primarily in the Krajina area, whose rights also must be respected. There have been disturbing reports of human rights violations being committed against this population.

Fourth, in the areas of Bosnia which fall under the mandate of the Federation, the populations of primary concern are those who have been internally displaced by the fighting. They have not crossed a recognized international frontier, but rather they have been displaced within their own country.

Making the Federation work, building toward a civil society and nurturing democratic institutions are imposing and daunting challenges. In this regard, the divided city of Mostar is the most visible and vivid example.

This is a special project of the European Community. And it is reported that over \$300 million has been invested to reintegrate the city of Mostar. And yet the city remains as divided as it symbolically is by the bridge that was destroyed by artillery 2 years ago.

The ethnic Serb areas of Bosnia, the so-called Republic Srpska, presents a whole new set of challenges. Over the past months, over 170,000 newly created refugees, have come into this area. These ethnic Serbs have sought and found temporary lodgings, but their conditions are by no means sufficient, particularly as the winter comes, and they will need continued external humanitarian aid.

Serbia itself has had to absorb over 150,000 new refugees, the majority of them in the Vojvodina area. In large part, because of the embargo, there is a chronic shortage of materials for shelter, clothing, food, and medicine. It is becoming increasingly clear that most all of these refugees will not return to their homelands, and provisions must be made starting now for their permanent resettlement in Serbia.

Let me conclude by spelling out several basic principles that I believe should form U.S. policy and world policy toward this refugee situation.

One, the basic principles of asylum, protection, and non-refoulement must be adhered to. Two, precipitous moves by countries of asylum to return refugees against their will must be opposed. Three, resettlement as a durable solution option for a number of refugee victims of the war must be kept open, and preferably exercised with both generosity and compassion.

Four, the assumption that persons driven from their homes by acts of violence can and should be returned to their homes, even if they no longer exist, must be questioned. The scars left by acts of violence—assassination, murder, rape, torture, burning and looting, can be so deep that to expect survivors to return to the scene of the crime is unconscionable.

There are precedents here. In the immediate post-war years, victims of Nazi oppression, especially Jews, who were displaced in Western Europe were not required to go back to Germany. And in more recent years, similar conclusions were reached regarding Cambodian refugees.

My last point. In the understandable impetus to reach a peace agreement, the refugee and displaced populations must not be viewed as either political pawns or potential voters for one or the other faction. Rather they should be regarded as individuals, each with his or her uniqueness respected and upheld.

There may be significant transfers of populations in the former Yugoslavia. These have happened before in the stormy history of the Balkans. But attention and care need to be paid to protect the individual human rights of each person involved.

Thank you, Mr. Chairman.

[The prepared statement of Mr. DeVecchi appears in the appendix.]

Chairman GILMAN. Thank you, Mr. DeVecchi.

Our panelist is Thomas Warrick, special counsel, Coalition for International Justice; senior counsel to the chairman of the U.N. Commission on Experts on the Former Yugoslavia. Mr. Warrick.

STATEMENT OF THOMAS S. WARRICK, SPECIAL COUNSEL, COALITION FOR INTERNATIONAL JUSTICE; SENIOR COUNSEL TO CHERIF BASSIOUNI, CHAIRMAN, U.N. COMMISSION OF EXPERTS ON THE FORMER YUGOSLAVIA

Mr. WARRICK. Thank you, Mr. Chairman. I want to express my great appreciation for being invited to testify before the committee today, and thank you for your kind words, and the kind words of Representative Smith in greeting us.

If I may, may I show you some slides on this particular issue. [Slide.]

Mr. WARRICK. Mr. Chairman, what I would like to do today is to go over the important issue of whether the War Crimes Tribunal is a force for both peace and justice in the former Yugoslavia.

As the negotiations in Dayton reach what is very clearly a critical stage, I would like to address five points. First, I would like to ask the question is it important to enforce the law. Second, I would like to address not the question of the War Crimes Tribunal as

something that vindicates international legal and human rights, but I want to address the very question of the United States national security interests in the War Crimes Tribunal in the former Yugoslavia.

Third, I would like to address very quickly the possible effect of a recent press report that Karadzic and Mladic, who have been indicted for the most heinous crimes, might be allowed to live in comfortable retirement.

Then I would like to address the issue of Security Council sanctions. And finally, if I may, present you with several recommendations on this issue.

[Slide.]

Mr. WARRICK. Mr. Chairman, the first question I ask, is it important to enforce the law, almost cries out for an indignant response. And yet, that is precisely the response that the international community needs to deliver by an effective War Crimes Tribunal.

No one in the United States would ever countenance the notion that it was unimportant to enforce the laws that Congress has adopted. Yet in the international context, outside of countries with leadership such as the United States, this particular question does not seem to be addressed.

One of the things that we learned in the Commission of Experts, Mr. Chairman, is that it is important to have exposure of gross human rights violations anywhere they occur. Let me show you a rather complex graphic that we developed to illustrate this point.

[Slide.]

Mr. WARRICK. What we are looking at here is a chronology of the events of the summer of 1992. And I am particularly referring to the ethnic cleansing of the region of Keraterm in northwest Bosnia.

We know that the camps that were set up by the Bosnian Serbs opened at about the same time in early May. On August 2, 1992, a Newsday reporter, Roy Gutman, broke the story of the Omarska camps as being camps very much reminiscent of the camps operated by the Nazis during the Holocaust.

Within days, the story was picked up all over the world. Two days later, an ITN camera crew recorded images that have been burned into the memory of the world. For the first time in Europe since the 1940's, we saw emaciated men held behind bars with their fate uncertain and their deaths quite possible.

As a result of international attention brought to this issue, international attention being refocused by the War Crimes Tribunal in the Hague, the camps were closed. Many of the camps were turned over to ICRC supervision. In other cases, prisoners were transferred to more humane conditions or simply released.

[Slide.]

Mr. WARRICK. Let me show you another example that dramatizes the extent to which publicity of violations of human rights can have an effect on deterring those violations.

This is an analysis from the data base of the United Nations Commission of Experts. On this red line here, I have graphed the number of incidents of sexual assault in the data base.

As you can see, Mr. Chairman, it peaks in about May to June 1992, and begins to decline. The light blue columns that you see here are the number of news stories reported on rape and sexual

assault in Bosnia taken from the English language data base NEXUS.

We also took a look at the data base of Serbo-Croatian language media, which are these little purple areas here, as reported by the Foreign Broadcast Information Service. Now there are several things that I can suggest to you from this, Mr. Chairman, that our analysis has showed.

The first thing is that even though the press in the former Yugoslavia in many cases is rigidly controlled, nevertheless, the western press does have an effect in driving the Serbo-Croatian media. In essence, the story becomes so big, that it cannot be ignored.

The second thing is that it is apparent that the increase in the number of stories is coincident with the decrease in the number of rapes. Now it is quite possible that that could be a coincidence. It is quite possible that there might be some other explanation.

But I would suggest, Mr. Chairman, that one explanation is the most obvious. That the publicity of these incidents of sexual assault helped in a way to deter them from occurring.

[Slide.]

Mr. WARRICK. The second point, Mr. Chairman, on enforcing the law is the moral and ethical imperative of never again. The promise that all of us made after World War II as a collective society. Even in places such as Rwanda, but especially in Bosnia, the question that we have to ask ourselves is whether we are going to remember one of the most crucial lessons of history.

In the week prior to German's invasion of Poland during World War II, Adolph Hitler is said to have remarked, "After all, who remembers the Armenians?"

Certainly, in the context of security of the United States in the early part of this century, no one could have suggested reasonably that Armenia was vital to the United States national security interests. Yet the hundreds of thousands of Americans who gave their lives in World War II have clearly shown that these things are not completely disconnected. That we do have interests in what happens in other parts of the world.

Next, Mr. Chairman, I want to make a point that we need to think of the War Crimes Tribunal as the means of enforcing the Geneva Convention. I call this the Senator McCain argument. Actually, I have never heard the Senator express it in quite those terms, but his record as a prisoner of war in Vietnam and his experiences that he has recounted since then make it very clear that we need to send a very strong message that prisoners of war, ours and other countries', must be given the respect accorded by law.

A week ago, Mr. Chairman, in this very room, I heard you hear testimony about one of the most dangerous rogue nations in the world today, and how we were going to deal with the problems of Iranian terrorism and other threats to U.S. security.

There are other rogue states. And the leaders need to hear a message that if they violate the Geneva Convention with respect to prisoners, that they will be hounded to the ends of the earth in order that justice would be done to them.

Finally, we need to send a very strong message here that in essence says that it does not matter whether you win on the ground in your war, that you will be punished.

[Slide.]

Mr. WARRICK. Let me address now, Mr. Chairman, an issue that I do not see getting quite the attention in the debate over whether war crimes and peace are compatible. And that is the question of United States national security interests.

Mr. Chairman, one of the things that I must say I find very troubling about our policy of pursuing negotiations in Dayton, Ohio is at least to me and perhaps to others, I am not sure that I understand what the U.S. strategy is. I suggest that what we need is a strategy, not a policy.

One of the things that we learned from the Commission of Experts is that the horrors of this war are very clearly being driven by what happened in World War II. The stories that you sometimes see put out about centuries of ethnic hostility being the cause of these atrocities in Bosnia simply are not borne out by reality.

If you counted up the number of years that Bosnia was at peace and compared it to the number of years that it was at war, you would see that war is very clearly the exception and not the rule. People were able to live together side by side in the same communities for literally hundreds of years without doing this type of violence to each other.

One of the things that we learned and what the Commission found out, Mr. Chairman, had to do with the motivation of those who actually committed the atrocities. This is a point that I have seen very little coverage on. The key factor that drove many of the people that we either spoke to or addressed indirectly is that they felt that there were unsettled scores from World War II.

One very chilling incident occurred when one of the members of the Commission, I will not say who for obvious reasons, had an interview with a Serbian official in Belgrade. And finally, after a very frustrating interview, just in frustration said, "You know, what on earth is the problem here, why is all of this happening?" And the official is said to have remarked in what he thought was his most charming and engaging manner, "You must understand that during World War II that they," referring to the Croatsians, "they killed 700,000 of us and we killed 200,000 of them. So we have 500,000 coming to us."

That attitude, however cynical it may seem, is perhaps the source of much of the feelings of anger and violence that have been given voice in the ethnic cleansing of Bosnia.

The propaganda campaign conducted by authorities out of Belgrade, which whipped this attitude up into a frenzy, is responsible for much of the atrocity that we have seen in former Yugoslavia.

The strategy in response to this, Mr. Chairman, I would suggest is to focus on the lasting peace that both you and Representative Smith addressed in your opening remarks, rather than something that might turn into an 18-month cease-fire. The key to this is going to be establishing a sense of justice among the victims in order to break the cycle of violence.

Everyone agrees—and I think that you will find, Mr. Holbrooke, if you were here, saying this as strongly if not more strongly than I—that any policy based on simply obtaining signatures on a peace treaty is going to be of no value in terms of establishing a lasting peace. Only performance on the ground matters. And therefore, fo-

cusing on simply obtaining a peace agreement, I would suggest, is not where the United States should be directing its efforts.

There is a lesson out of Somalia that has been driven home by you and others, Mr. Chairman, that before U.S. forces are committed, there has to be a chance for peace after American forces leave.

And I would suggest that there is a reason to be concerned that the victims in the former Yugoslavia, who heard nothing after World War II of the injustices committed in particular against the Serbian people in concentration camps such as Jasenovac that did not receive the attention of the camps that were in Germany, that those victims heard nothing after World War II, that today's victims have to see justice be done before the cycle of violence resumes in a very short amount of time.

[Slide.]

Mr. WARRICK. There was a press report that came out 2 days ago, Mr. Chairman, that I would like to address your attention to. Because its consequences are very troubling, and it may be something worth pursuing even in the next few days.

The newspaper Nin in Belgrade, which admittedly has some connection with the government there, has reported that there is or may be an agreement that Karadzic and Mladic, the Bosnian Serb leaders, who have been indicted for genocide, crimes against humanity, and war crimes, would be allowed to resign, but then would not be turned over for trial. Instead they would be allowed to live in Belgrade.

One of the points that is often overlooked is that there is a way that this can be done under the Yugoslav legal system in a way that the United States would not necessarily be able to prevent by writing some into the constitution for the Bosnian republic.

Essentially, in the Yugoslav system, it is very different from our system, Mr. Chairman, where the United States Constitution has precedence over constitutions over the states. In the legal system in the former Yugoslavia before its break-up, the opposite was true. The Republic constitutions—Serbia, Bosnia, and Croatia—have legal primacy over the Federal Republic.

In effect, what this means is that the constitution of the Republic of Bosnia, which some of the best lawyers in the State Department are working on, is not in fact what may be the controlling document. It may be the constitution for the Bosnian-Serb Republic that we ought to be directing our attention to. Because that is where the devil may lie. The saying in the Balkans that the devil is in the details is never more true than in a situation such as this.

Now very clearly, Mr. Chairman, any effort to grant immunity is illegal under international law. That is a principle that is so well established that it needs no discussion or elaboration by me. There was a report that I included in the packet that has been provided to the members of the committee.

Yesterday at a luncheon at the Hague, Justice Goldstone made it very clear that he would be considering resigning if any permanent member of the Security Council agrees to allow Karadzic and Mladic to live in comfortable retirement in Belgrade. His exact words were that he would question whether it was worthwhile pursuing the work.

That is a very serious question and one I think that needs to be put to Justice Goldstone who arrives here in Washington today, and also to the administration as the peace is negotiated.

Knowing many of the prosecutors and investigators in the prosecutor's office in the Hague, I can state with some assurance that Justice Goldstone would not be the only person who would feel compelled on principle to resign were something like this to happen. I think that we may see mass resignations were that sort of event to occur.

Such an agreement, if it ever came to be, Mr. Chairman, would very clearly violate the most fundamental American principles, and it is something therefore that deserves close attention in the days ahead.

[Slide.]

Mr. WARRICK. Let me touch very briefly in just a minute on the issue of Security Council sanctions. The essence of this question, Mr. Chairman, is that under what has been printed in the press that sanctions are going to be lifted before there is any actual performance on the question of turning over suspects to the War Crimes Tribunal in the Hague.

In an instance where Mr. Holbrooke himself has been so careful to point out that performance is the only measure by which agreements there can be judged, it seems to me very crucial that we look to performance on the issue of the War Crimes Tribunal before lifting at least some of the key sanctions.

I also want to direct your attention, Mr. Chairman, to the possibility of legislation that would require U.S. directors of international financial institutions to oppose and vote against assistance to countries that harbor indicted war criminals.

From my analysis of these matters, Mr. Chairman, this is probably the single most effective measure that the Congress has to ensure compliance not only with the Yugoslavia tribunal's orders, but also of the Rwanda tribunal.

[Slide.]

Mr. WARRICK. Let me leave you if I may, Mr. Chairman, with four very brief recommendations. First, it is vital to preserve the independence of the chief prosecutor, Justice Goldstone. Second, it will take patience and perseverance in order for the War Crimes Tribunal to succeed.

Third, it will take adequate resources to be provided to the tribunal both in the form of additional voluntary contributions and additional support for U.S. information sharing, which is the reason for Justice Goldstone's visit to the United States to consult with administration officials on that question. And finally, Mr. Chairman, the War Crimes Tribunal needs political support. Thank you.

Chairman GILMAN. Thank you, Mr. Warrick.

[The prepared statement of Mr. Warrick appears in the appendix.]

Chairman GILMAN. Mr. James O'Dea of Amnesty International. Mr. O'Dea.

STATEMENT OF JAMES O'DEA, AMNESTY INTERNATIONAL

Mr. O'DEA. Thank you, Mr. Chairman. And I would like to raise some of the salient features of my full testimony which I submit for the record.

Chairman GILMAN. Without objection.

Mr. O'DEA. I think it is deeply dismaying, Mr. Chairman, that there really have not been more what I would call confidence building measures by the governments who are now meeting in Dayton. The level of killing, expulsions, and human rights abuses continue as the process evolves. That has to make someone somewhat skeptical of what is going on.

In today's Washington Post, a participant in the negotiation says that the major problem is the map. And I would decry that kind of sentiment. The major issue is the people, not the map. The re-drawing of maps cannot itself bring about an end to human rights abuses, nor provide adequate redress for the thousands of victims.

There are tens of thousands of people who have been killed. There are still more than 25,000 missing or disappeared, and over two million refugees. And some people consider this a question of maps. However the maps are drawn, minorities will still have to be protected.

The Federal Republic of Yugoslavia and the Republic of Croatia may have come to an agreement to resolve their dispute over Eastern Slavonia without recourse to a war, but the challenges remain. For example, President Tudjman must now ensure that the sizable Serb minority in eastern Slavonia is fully protected.

Given the recent atrocities by the Croats in the Krajina, President Tudjman will have to take swift action to gain the confidence of minorities throughout Croatia.

I would like to draw your attention again to today's New York Times. Let me, if I may, Mr. Chairman, read from that concerning Mr. Tudjman.

Chairman GILMAN. Without objection.

Mr. O'DEA. "Unknown to the American negotiators, President Tudjman of Croatia today promoted an officer who was indicted on Monday as a war criminal by the International War Crimes Tribunal at the Hague. Reuters reports from Belgrade today that Mr. Tudjman promoted General Tihofil Blaskic, the commander of the Bosnian-Croat militia as an inspector in the Croatian army."

I would draw your attention to the fact that the atrocities for which the general is indicted are well documented in an Amnesty International report of 1994. And it seems inconceivable to me that while these talks are going on in Dayton, that the president of Croatia is promoting an indicted war criminal. What kind of signal is that giving about what lays ahead beyond the talks in Dayton?

Civil society cannot be achieved by a settlement between the warring parties that does not seek to transform the pervasive climate of impunity and intolerance that now exists. Maps cannot provide protection against human rights violations when both the government, the military, and the paramilitary leaders draw their support from instilling hatred of religious groups.

Serbs who are supportive of a multi-ethnic society may only have an opportunity to express their view if Karadzic and Mladic, who are both indicted, are arrested.

The immediate steps which are needed that the International Committee of the Red Cross must be allowed access; all non-combatants should be released; and all other detainees should be held in accordance with the Geneva Convention; and war crimes investigators should be allowed unrestricted access throughout the former Yugoslavia.

And it is very urgent that this be one of those confidence building measures that I referred to because there are consistent reports now that Bosnian Serbs are destroying evidence of war crimes inside Bosnia. So the need to have those investigators in place very soon is very important.

It is also critically important that people not be forced back, that ethnic cleansing not be replaced with ethnic engineering. And again, the Croatian government in recent weeks has sent abysmal signals about what the future may look like having forced back people who fled the recent atrocities and killings in Banja Luka.

I think that it is very important for the U.S. Government to get a handle on what is happening between Serbia and the Bosnian Serbs. Milosevic seems to have been identified as the key element in a peace settlement. And yet, not only do these indicted war criminals, Mladic and Karadzic, appear regularly in Belgrade, but that people responsible for violations are crossing from Serbia into Bosnia to commit violations.

Particularly, evidence has grown about the involvement of Arkan and his paramilitary crossing into Bosnia to commit violations both recently in Banja Luka and in connection with the atrocities around Srebrenica.

If there is any good faith intention by the Federal Republic of Yugoslavia to isolate the Mladic and Karadzic, surely they could begin with sealing the border from those who are crossing it to do killing, and to continue human rights violations.

Let me also say that when Justice Goldstone has arrived in Washington, one of the messages will be that U.S. intelligence co-operate more fully in handing over information to the War Crimes Tribunal.

It is now clear from several reports that the United States had intelligence about buildups before Srebrenica, had photographic material during the atrocities in Srebrenica and after, and has vital information to the tribunal, which it must hand over.

It is regrettable that some of the information that the United States has, apparently which even consists of monitored telephone conversations between Belgrade and Pale, has not been handed over to save lives. One has to question whether this information may have been suppressed in order that the peace talks could move forward.

I do not think that any measures that could save lives should be put in peril at this point. In fact, some might suggest that it is rather cynical to send Assistant Secretary Shattuck to the region to condemn the violations after they have occurred when the U.S. Government might have raised its voice beforehand based on its own information and intelligence.

The second part of my testimony, Mr. Chairman, deals with our views as to how the overall human rights framework will work for

the peace process. And I will be happy to answer any questions about that.

But in the interest of time, I will cease now. Thank you.

[The prepared statement of Mr. O'Dea appears in the appendix.]

Chairman GILMAN. Thank you, Mr. O'Dea.

Mr. Warrick, what is the customary international humanitarian law that you referred to, and how does it bind the states, and are individuals bound by it, does it include conventions or treaties that not all participants have accepted; and does it allow prosecution for the slaughter of civilians, the rape of female non-combatants, and the detention of villagers under inhumane conditions?

Mr. WARRICK. Mr. Chairman, all of those things that you describe are violations of international law. It is interesting that after the break up of the socialist Federal Republic of Yugoslavia that most of the successor states including what we call the Federal Republic of Yugoslavia, which is really Serbia and Montenegro, actually acceded to all of the major international conventions.

So Serbia is a party to the genocide convention, to the Geneva conventions, and to all of the major applicable laws that people can be prosecuted under.

The Republic of Bosnia-Herzegovina is also, and that applies to everyone in their territory including break away groups that wish to establish themselves as independent states. The law clearly applies to everyone.

Chairman GILMAN. You refer to it as customary international humanitarian law.

Is it actually specific international law that you are referring to?

Mr. WARRICK. In the case of the Geneva conventions, which govern war crimes, yes. In the case of the genocide convention, which covers genocide, yes. Crimes against humanity was prosecuted at Nuremberg as if it was simply part of international law. And therefore, no state could derogate from it simply by saying so. In effect, you cannot declare yourself to be able to commit crimes against humanity. That is what international law says.

Chairman GILMAN. So then it is actually not customary law, but you are referring to specific issues?

Mr. WARRICK. No. Customary international law is simply a label that international lawyers sometimes use to refer to international law as established by the custom of civilized nations, a phrase that is a holdover from the 19th century, and simply refers to what everyone regards as the law.

Chairman GILMAN. With regard to your testimony, you may have some very important points.

Have you passed them on to our negotiators at all?

Mr. WARRICK. No, I have not. They are in Dayton, Ohio, and the only means of communication is outward only, and indeed only through the press office in the State Department. Some of these points I know I have spoken to privately with people in the State Department some months ago, but not in the context of the present negotiations.

Chairman GILMAN. I would suggest that you might want to put your thoughts in writing to the State Department. So that it gets to them in time to be considered by the negotiators. Indicate that

you had testified before a committee, and you want them to be aware of the points that you have raised before a committee.

Mr. WARRICK. I will certainly take that up, Mr. Chairman.

Chairman GILMAN. At our suggestion, you are passing it on to them for consideration.

Mr. Warrick, do existing U.N. or future NATO troops have the authority to arrest those indicted by the tribunal?

Mr. WARRICK. Legal authority, yes. Under the U.N. charter, all members of the United Nations, especially nations involved in peacekeeping exercises under Chapter VII of the U.N. charter, are required to help carry out directives of the Security Council, if requested to do so. That would certainly give U.N. forces, and indeed the forces of any U.N. member, even if not acting under U.N. authority, the legal right to arrest those indicted by the War Crimes Tribunal.

That is a separate question from whether you want them to actually go out and actively arrest people. That is a different question. But the legal authority is there.

Chairman GILMAN. Would the arrest order have to be a specific direction by the U.N. Security Council?

Mr. WARRICK. No. The mechanism already exists in the Security Council resolution that established the tribunal. States were ordered to comply with the orders of the tribunal, including indictment orders. So the authority is already in place, and the question is whether it would be exercised.

Chairman GILMAN. Who would have to exercise that out on the field?

Mr. WARRICK. It would be the commanding officers of the military forces involved.

Chairman GILMAN. So then it would be the Security Council directing the commanding officers to exercise that authority?

Mr. WARRICK. I am sorry that I am not clear, Mr. Chairman. It is not my fault. The question is not the Security Council needs to take any specific action. That action was actually carried out in May 1993. And it is simply like when this Congress passes a law that authorizes the FBI to arrest someone.

Chairman GILMAN. I understand that, but who has the responsibility out in the field to fulfill that or to implement that order?

Mr. WARRICK. The actual answer is no one is specifically ordered at the moment to go out and arrest anyone. Some military authority would have to issue the order to arrest Karadzic, or Mladic, or anyone else when they came across them, or to go out and hunt for them. But that would be simply like any other command order, just as the command order to go in and protect a village. It would be any military officer.

Chairman GILMAN. So is that discretionary?

Mr. WARRICK. Yes. Just to the same extent that a police officer has the discretion to arrest a murder suspect.

Chairman GILMAN. That is a pretty broad statement.

Mr. WARRICK. Yes, I realize that. I do not mean to suggest that there is any absolutely necessary mandatory requirement to go out and hunt down possible war criminals. That is a very delicate question that needs a much broader consideration than here. The authority is there, and the question is that what you want U.S. forces

to be doing. And that I suggest is a tough question that you will have to be wrestling with, Mr. Chairman.

Chairman GILMAN. Mr. DeVecchi, what role has the UNHRC played in the protection of refugees and displaced persons from local government and military officials throughout the former Yugoslavia, and how successful has the agency been?

Mr. DEVECCHI. Mr. Chairman, I would have to give a personal opinion on that, and it is a subjective one. I would say that the UNHCR has carried a principal role for providing humanitarian aid and assistance throughout the areas of former Yugoslavia, and that has become its primary mission.

I would have to say that the questions of protection of refugee populations which is often the primary mandate of UNHCR have been subordinated to the humanitarian relief effort.

Chairman GILMAN. Thank you. Again, I want to thank the panelists for their excellent testimony.

Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I certainly want to commend all three gentlemen for their statements. And they were certainly comprehensive to the extent of the problems we are faced with. The human rights violations of the victims and the refugees, especially in the crisis, are serious with what we are now faced with in Bosnia.

I would like to ask Mr. Warrick in his comments with reference to the problem in Bosnia and the current negotiations now taking place in Dayton, Ohio, do you not think that the President is acting according to his constitutional rights to be the initiator of foreign policy of this government, at least to give him a chance to negotiate the warring factions, with the fact that the United Nations had failed in the process, that our European allies have failed in the process, so that the last hope that our country should at least take an initiative; do you not think that we should at least give Secretary Holbrooke and the members of the administration some credit, the fact that they have at last brought these three warring factions to the negotiating table that hopefully they can devise some kind of a peace strategy?

Mr. WARRICK. Mr. Faleomavaega, not only would I give them some credit, but I would give them a lot of credit. It was only when the United States took leadership of this issue that any real progress I think has been made. Certainly, over the last several years, on the basis of what has, I think we would have to admit, been primarily a European effort, that we have seen little results or no results, and in some cases very horrible results.

So I am very pleased that the President, and the Secretary, and Assistant Secretary Holbrooke, and others have taken leadership on this issue.

Mr. FALEOMAVAEGA. I appreciate that very much. As you are well aware, we have some very strong philosophical disagreements in terms of the process that some of our friends here on the Hill feel that the negotiating process should be that the Congress participate in the process.

But do you not think that we do have a process. The President has allowed at least at this juncture to have a proposed agreement, to come out with something after the factions work with our ad-

ministration officials, as it is the prerogative of the President and his right as the chief leader of our diplomatic relations with other countries. And the fact that we have a Senate and we have the Congress when it comes to controlling the purse strings.

So I think that the process is there. I do not think that it would be very premature for the Congress to jump into the fray now when the President has not even had a chance to breathe or to give him a chance to see what he could do in his leadership capacity as the head of state or perhaps even to say the leader of our country to see that perhaps this may be a possibility that these three warring factions could come out with some sense of an agreement.

I note with interest here you quoting Adolph Hitler saying that, "After all, who remembers the Armenians?" I recall a similar statement made by the illustrious former Secretary of State Henry Kissinger when we unilaterally just went ahead and exploded those nuclear bombs in Micronesia, much against the will of the poor Marshallese people. And you know what he said? "There are only 90,000 of them. Who gives a damn?"

You know, you put the structure on saying that we are very good about looking at human rights violations in other countries and the problems that we see, but sometimes the finger might be pointing at us too, to see if our own house is in order in terms of how we can make judgments.

I think that it is great that we have the likes of Justice Goldstone, and his indignation about the problems. That is if this tribunal has the enforcement mechanism. So we say by law that you violated international law. We find that in several instances that those sovereign countries say all right, so you made your law, who is going to enforce it.

And this where the crux lies. I mean the problems that we have with international tribunals and international law. They can only be enforced in the essence if that country willingly says all right, you caught me, put me in jail.

Mr. WARRICK. Mr. Faleomavaega, up until about 10 seconds ago, I would be prepared to sign on to everything you just said. And at this point, I have to interject, if I may. The notion that there is no one to enforce international law is a very serious concern, and one I think that we need to take another look at now. Largely because of the end of the cold war, and in effect the emergence of the United States as the principal super power in the world today.

One of the things that I think we learned out of the Nuremberg experience fifty years ago, in fact exactly fifty years ago, is that there is a virtue for U.S. security in establishing the rule of law internationally. And admittedly, over the last fifty years, it has not been an easy process. I think that everyone here would agree on that.

Now that some of the old animosities have faded away, perhaps it is time to see if we can reinvigorate the principles of Nuremberg, and reestablish the role of international law in governing what actually happens on the ground.

Mr. FALEOMAVAEGA. Mr. Warrick, I could not agree with you more. This has been my sense of frustration. In the 7 years that I have been serving as a member of this committee, I have always wondered why have we not done the same thing against Pol Pot.

Here is one master of terror and murder that we could ever have thought of. Yet he is a free man.

Mr. WARRICK. You are absolutely right, Mr. Faleomavaega. In fact, the administration I know has undertaken a study that would investigate and document the genocidal crimes of Pol Pat. So the administration deserves credit as do members of this committee for pushing those sorts of investigations through. I can think of a few other things that need to be investigated.

The fact that we cannot prosecute everybody is never an excuse for saying that we should prosecute no one. We all agree on that. Here we have a tribunal in place with an effective prosecutor and some excellent judges. So we need to give them that chance.

Mr. FALEOMAVAEGA. Do you think that it is quite possible for the records and everything of these three countries, as you well know, the warring factions, that the atrocities are not just attributed to the Serbian Bosnians. I mean it is also to the Croats and the other factions, if I am correct on that.

My question is do you think that the Bosnian crisis could well illustrate the very point that you are trying to say, that if there is some rule of law that there will be proper enforcements in the process, and that should be an integral part of the current negotiations now going on in Dayton, Ohio. That these criminals if they be found or if they be prosecuted should be brought to justice.

Mr. WARRICK. I would agree with that. We are dealing with individuals as leaders that I have heard described as among the most calculating men in Europe. You know, think how different some of their decisions might have been if their calculation had been that they would have to spend the rest of their lives in prison before they undertook some of these atrocities. Let the next people who come along have that calculus in mind.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. My time is up. Chairman GILMAN. Thank you, Mr. Faleomavaega.

Mr. Kim.

Mr. KIM. Thank you, Mr. Chairman. I have one question, but I do not know how to put it diplomatically. I was thinking about it, and I cannot think of any way. I am going to ask you bluntly. I am sure you support the idea of sending ground troops out there to stabilize the area. They talk about 20,000 troops.

Do you support the concept; and if you do, can you tell us why, maybe some simple language why you support troops and why we have to send those troops out there?

Mr. WARRICK. Are you addressing that to me?

Mr. KIM. I ask whoever agrees with this concept, let me hear it.

Mr. DEVECCHI. I think that we all might wish to respond in our individual ways. In my view, Mr. Kim, the sending of troops is essential. America is the leader of the free world. We have seen how trying to stand in the side lines, while the Yugoslav tragedy unfolds, has brought nothing but increased suffering and death to hundreds of thousands of people over the last 4 years. And that one of the obligations of being the leader of the free world is that one has to lead.

I would also submit that it is in our national security interests that if the unraveling of civil society as seen in the Yugoslav case is permitted to continue, it could easily evolve into an unraveling

that would affect our commitments and our security a great deal more than it would now.

Now we have a volunteer army. We have an enormous defense budget. If we are not willing to commit a portion of that volunteer army and the resources that the American taxpayers uphold to bring peace to former Yugoslavia, I would have to say when would we be willing to do so.

Mr. KIM. I do not want to be argumentative. But I agree with you on one thing, that we are the leader of the free world.

But then how about sending group troops to Cuba or even North Korea; they are just as urgent, are they not? That is my first question.

The next one is do you know that every public poll I have seen shows more than 75 percent of the people are opposed to the idea of sending ground troops?

What makes you think that we are smarter than them? What makes you think that it is a good idea in spite of the fact that people oppose this idea?

Is there something we do not know, or do you know something that we do not know, can you tell us that?

Mr. DEVECCHI. The ex-Yugoslavia puzzle is one of the most complicated and complex that has existed in my knowledge. My feel is that it has been poorly presented to the American public. And those who have come closer to the situation tend to see it in perhaps more simple and fundamental ways than the general public.

Again, I would say that there is a question of leadership both from the administration and from the Congress, if they so believe, to explain to the public why this is in our national interest. And I believe those who have looked at it closely, the majority feel that it is in our national interest. So I think that it is a question of the responsibility of leadership in informing the public.

Mr. KIM. One last question, Mr. Chairman, that I have.

I understand that we have a humanitarian assistance program out there, and it has been divided up by ethnic group so to speak. Each group gets so much.

What kind of formula do you use to ensure that each ethnic group does not get too much humanitarian assistance? Do you have any special formula to govern who gets how much?

Mr. DEVECCHI. No, sir. It really depends on the willingness of funding sources. My organization, the International Rescue Committee, has been involved in providing humanitarian assistance on all sides for almost 4 years now. The majority of our funding comes from the United Nations High Commissioner for Refugees or from the United States.

We are not in a position to influence that to any great degree, but our mission and mandate is to provide the assistance as economically and as efficiently as possible.

Mr. KIM. That is what I am concerned about. If it is up to the giver, it does not matter what particular group is starving or not. It is my money, and I want to designate a certain group. That is who I want to give it to, never mind the other groups.

Isn't it kind of unfair to the other groups who do not have any influence? Shouldn't that humanitarian assistance help everybody, not certain groups more than others?

Mr. DEVECCHI. I would have to say that the contributions to humanitarian assistance are limited to some degree by the resolutions of the United Nations, of the Security Council. And here the embargo that has been imposed on Serbia has taken precedent really over humanitarian assistance. So there are limits on what the international community has agreed to do as far as providing assistance to one group as opposed to another.

Mr. KIM. At this time, which group gets most of the assistance?

Mr. DEVECCHI. I would have to say in dollar terms that the largest amount of assistance has gone to the people of Bosnia, and in particular to those in the federation. Second, it would be to refugees and internally displaced persons in Croatia. And third, to the Serbian area and the Republic of Serbia.

Mr. KIM. Thank you, Mr. Chairman.

Chairman GILMAN. Thank you, Mr. Kim.

Mr. Hamilton.

Mr. HAMILTON. Good morning, gentlemen. We are pleased to have you here.

Have you had a chance to look at the President's letter to the Speaker with respect to Bosnia dated November 13th? Have you seen that letter and had a chance to review it?

Mr. WARRICK. This was reported to the press.

Mr. O'DEA. Just the press report, Mr. Chairman.

Mr. HAMILTON. Well, one of the areas that the President stresses in a section of his letter is civilian humanitarian issues and reconstruction. And he points out, of course, the huge toll the war has put on the fabric of Bosnian life. And then he says that there is going to be a coordinated international effort to address all of the problems that exist in Bosnia.

He emphasizes that we are not going to permit mission creep that would involve IFOR, but that there is going to be a coordinated international effort with international aid agencies. The International Red Cross would deal with prisoners and missing persons. International aid agencies would help the people of Bosnia to rebuild.

The European Union has indicated a readiness to take the lead in these efforts in tandem with the international financial institutions.

The President estimates a U.S. contribution of \$500 or \$600 million, that is a preliminary figure. And I just wonder if you have any reaction to all of this, how you think it would go.

In other words, you put IFOR in there. It has major military capabilities. But apparently, it is not going to be involved in any way, as I read this letter, in terms of reconstruction. But the humanitarian effort and the reconstruction effort is going to be up to the international community.

You have had some experience in all of this. What is your reaction to all of that, is that feasible, how does it sound to you?

Mr. O'DEA. Mr. Hamilton, I think that one of the central questions that we need to focus on are the refugees, the displaced people, and how they get back home. This is going to be the political and humanitarian problem of the peace process. There are 1.2 million refugees in Bosnia. There are 820,000 in the neighboring re-

publics. And according to UNHCR, up to 700,000 refugees in Europe.

The Croatian government recently forced some people back into Bosnia who have fled persecution in Banja Luka. If a multinational force is present, it is going to have to, I believe, have a role in ensuring them the right to return, which is agreed to by the government in the basic principles that they outlined in September, that the right to return is fully voluntary, and that security of person is guaranteed.

If you want to go back to your village, somebody has to be there to make sure that when you get home, that you are not going to be subjected to further forms of persecution.

And many people, as has been pointed out by Mr. DeVecchi, will probably not want to go back given what is happening as the peace accords are being discussed, the kinds of levels of persecutions that are currently happening.

Mr. HAMILTON. Now according to the President's letter, the responsibility for dealing with refugees, would not be IFOR but would be the U.N. High Commissioner for Refugees.

Are they up to the job?

Mr. O'DEA. The UNHCR will not be able to provide the climate. It is the multi-national force that is responsible for the security of the area. And as populations begin to move, yes, the UNHCR wants to see a three-step process occur perhaps over even a 2-year period. They are not going to be in a position, as I said, when people arrive back in their villages to ensure their safety and security. That will be the role of the competent authorities, military authorities, who are present.

Mr. HAMILTON. The question really comes down to, can IFOR avoid mission creep. You have got the military force in Bosnia. They are creating a secure environment there. You have got all of these refugees flowing in. IFOR, according to the President's letter, is not going to have anything to do with those refugees. It is all up to the U.N. Commissioner. And yet, the human needs are going to be obvious and overwhelming.

Well, I know I am throwing this at you without you having studied or read the letter. I am just looking at it myself. But I am beginning to wonder how this thing works out in terms of the logistics. Maybe not all of these refugees come back, but a lot of them are going to come back.

You are going to have hundreds of thousands, right?

Mr. O'DEA. That is correct.

Mr. DEVECCHI. And in this context, Mr. Hamilton, I would refer you to a statement from the U.N. High Commissioner for Refugees yesterday I believe in their press briefing, in which they were pleading that the precipitous return of populations not dominate the situation. That the conditions might be right for people to go back voluntarily, and that we should not be coercing or forcing people to do so.

This will require a pressure on all of the governments concerned, particularly as I said in my testimony, the governments of Western Europe, to avoid a precipitous rush to expel refugees, and on the government of Croatia to go slow in the forcible return.

Mr. HAMILTON. Let me ask you one other question. A key aspect of the proposal to put IFOR in there is to have an election within a year.

What is your judgment about that? What is the likelihood that Bosnians would be able to vote in this area within a year's time, and how does the refugee problem play into that, the right to return, and all of the rest of it. Can a valid election be conducted in Bosnia within a year's time?

Mr. DEVECCHI. My personal opinion is that it is very unlikely. And again, as I said in my prepared statement, that the refugees and the displaced populations must not be viewed either as political pawns or potential votes for one or the other factions.

Mr. O'DEA. I think that given the immediate needs to account for still currently 25,000 missing or disappeared persons and the return of people is going to need to predominate. And that we have learned in the past that rushed political time tables have created incredible havoc in the region by governments rushing to create new political solutions.

So I would say that is a very ambitious time table, Mr. Hamilton.

Mr. HAMILTON. Mr. Chairman, if I may ask one other question.

Chairman GILMAN. Without objection.

Mr. HAMILTON. On the question of the War Crimes Tribunal. That seems to be taking on an increased importance in this process, as we move along.

Is it your judgment that we can implement this peace in Bosnia, and at the same time indict, and try, and bring to justice these leaders, whose cooperation may be necessary to solidify things on the ground?

Is the War Tribunal idea an integral part of the process here, or is it going to get in the way of the process?

Mr. WARRICK. Mr. Hamilton, I think that the way of answering that question is to ask the question of what type of peace do we want. It would be very easy to establish what amounts to a cease-fire that would also then do very little to bring to justice the people who have committed these crimes. That could be done. But I would submit, however, that if that were to be the outcome of the process in Dayton, that what we would likely be seeing is a cease-fire of eighteen months and not a lasting peace.

I think that what we need to be focusing on is trying to in effect prevent the next war as much as we are trying to end the present one.

Mr. HAMILTON. So you see the tribunal as a very integral and important part of the process?

Mr. WARRICK. Absolutely. The first thing that we learned in the Commission of Experts' work is the extent to which the atrocities in this war are being driven by the atrocities of World War II. It would do nothing for the security of the region or even for U.S. security to establish an agreement now that would not break this cycle of violence that could get us in trouble in the future.

Mr. O'DEA. Mr. Hamilton, if I may make a quick point on that. I think that the process is essential for peace. Because those who are indicted are people who have not only orchestrated killings, but have incited others to kill, and have incited the ethnic hatred.

The Bosnian Serbs, who wish to live in a multi-ethnic Bosnia, have no chance of raising their voices if the mongers of hatred are still in power.

Mr. HAMILTON. Thank you very much.

Mr. KIM. Mr. Moran, do you have any questions?

Mr. MORAN. Yes, I do. Thank you, Mr. Kim.

I am particularly pleased to hear the response that was just elicited by Mr. Hamilton. Because I agree with you that unless the foundation for peace is firm and is built upon principles of justice, then it is not a foundation. It will crumble. And before long, we will see the same kind of hatred resulting in violence and ultimately war again.

So I do think that we have to dispel much of the propaganda that in fact incited this war, much of it coming out of Serbia initially. I think one thing that should be done is that Serbia be held responsible proportionately for the destruction and displacement that they caused.

If they want to be a fully participating nation within the international community economically and socially, then they will have to make good on much of the cost that they have imposed upon Bosnia.

But I have some very serious concerns about the goal, as well intentioned as it is, or returning people to their home. And you have addressed that, but I think that is the major issue that we need to look at. How realistic is it, particularly since most of the people who must be returned to their homes will have to be returned into areas that according to the peace plan being developed in Dayton are going to be controlled by the very people, at least from a nationalistic standpoint, that were responsible for their expulsion?

They would not have been expelled if they were in the Bosnian protected areas. So it is in the Serb areas where the worst of the displacement occurred. Many of these families are no longer the same family that they were. Many of them have lost the husband or the older males particularly. So the bread winner is gone in terms of a lot of the families. Even with economic assistance, I question how adequate it can be to rebuild their home, and to rebuild the economy in which these people were subsisting.

So I worry that some of the premise upon which this peace agreement is being worked out is faulty. But on the other hand, I do not see how the surrounding countries that have absorbed so many of these refugees can possibly sustain them, and possibly integrate them into their economy.

There is another consideration, and that is Kosovo, which as you know, 90 percent of the people are Albanian-ruled by the same folk who were responsible for what happened in Bosnia. And while their attention has been diverted to Bosnia, there is still a repression there, almost a police state.

And it seems to me that any peace agreement has to address that situation. That is an untenable situation. Even to think that Milosevic appointed Arkan to be the parliamentary member representing Kosovo.

So I would like for you to address your perspective on how realistic the plan is with regard to the ability to bring these people back and restore them to their homes. And also set up a firm foundation

for a lasting peace including Kosovo. I know that you addressed that in your statement, but I want to give you another crack at it.

Who wants to go first; Mr. DeVecchi?

Mr. DEVECCHI. Thank you, Mr. Moran. I do think that great caution must be taken against any wishful thinking or easy assumptions that when the war is over and everybody can go home and start again. It just simply is not going to happen. And in many cases, it should not happen. If we put ourselves in the position of some of the refugees who have suffered atrocities who have seen members of our family killed in front of our eyes by your neighbors, who have seen our daughters raped, who have witnessed unspeakable atrocities.

To think that you or I would freely go back and clean up the house and have the same neighbor again is totally unrealistic. So I think that there has to be a great deal of attention paid to the needs, expensive as it might be for countries in Western Europe and for the United States to keep the door open for permanent settlement of some of the refugees, and also for some population transfers within the area.

Mr. MORAN. So in other words, you would give another option to the refugees is what you are implying, not to relocate to where their home is, but to relocate within say the Muslim Croat part of the federation with new homes. So you would rebuild new housing, in effect splitting the country but accepting the reality that to do so otherwise is not realistic. That is a much more expensive proposition, as you say.

Mr. DEVECCHI. I think that is the reality of it though.

Mr. MORAN. Mr. O'Dea.

Mr. O'DEA. Fundamentally, after the talks in Dayton are over, and some agreement on the maps is reached, each of the governments of the former Yugoslavia will have sizable minorities. The reality is that the focus needs to be on how these governments can protect those minorities and become modern multi-ethnic societies.

And that is why I feel the attention in Dayton on the map drawing issue is diverting from the long term settlement. It is a rush to find a map that the governments will agree to, but which will not deal with this fundamental issue of multi-ethnic societies and how they are formed.

With regard to the return, it seems like an intractable problem. But without that, I think that the possibility of war being ignited again is all too great. I was speaking to Mr. Freilich of the U.S. Committee for Refugees yesterday, who did say however that some remarkable although small number of people on each side have begun to contact each other, and exchange deeds. That I have landed in your house and you have landed here. And there is some sort of informal process of exchange.

But I think that we are only at this point talking about some hundred who have initiated that kind of response.

Mr. MORAN. Could we hear from Mr. Warrick.

Mr. WARRICK. The only point that I would like to make on that, Mr. Moran, is that the ethnic cleansing, as you so rightly put it, has been very effective in making people never to want to return.

One thing that I think is an issue that this body is going to be grappling with in the next few days is when U.S. forces and others

get sent in to separate the warring parties, that we not lose sight of the fact that the idea of a clear line of separation is not exactly what is going to happen. Very quickly, the lines are going to defuse, and you are going to see people starting to move back and forth. Are we then going to be moving troops in those areas as well. The mission is then very different than separating fighting armies.

That is a terrible question. I do not envy those of you who have to deal with it in the next few weeks.

Mr. MORAN. The three of you have such fine and wise insight into this problem. Another aspect of the question that you did not address, and it may just be because there is no answer, but that is Kosovo.

Has there been any attempt to address the Kosovo situation in the peace talks that you are aware of?

Mr. WARRICK. No.

Mr. DEVECCHI. Not to my knowledge, no.

Mr. MORAN. Do you disagree that it is an untenable situation?

Mr. WARRICK. It is going to have to be addressed. And in effect, it is a question whether there is more flexibility addressing it now as opposed to later. And I do not know the answer to that question.

Mr. O'DEA. I believe that it is an essential confidence building measure that has to happen very soon that will reveal whether or not the government of the Federal Republic of Yugoslavia is in any way sincere in establishing the rights of minorities.

Mr. DEVECCHI. I personally continue to be very pessimistic about the future of that area, sir.

Mr. MORAN. I am afraid that is an accurate answer.

Mr. KIM. On behalf of our committee and committee chairman, Mr. Chairman, I would like to thank all of you for coming this morning, and giving us informative input. Thank you again. The meeting is adjourned.

[Whereupon, at 11:26 a.m., the committee was adjourned, subject to the call of the Chair.]

APPENDIX

LET THEM IN

Bosnia's refugees, our shame.

By Peter Schuck and Julie Schuck

Desperate hand-wringing, breast-beating and recrimination continue over the hapless American non-policy in Bosnia. But, despite the inertia, there is one action on which we should all be able to agree. The U.S. can take in many more permanently uprooted Bosnians—at trivial fiscal cost and without narrowing our military or diplomatic options.

The U.S. resettled 7,200 Bosnians in 1994 and will probably accept fewer than 10,000 this year. These numbers are shockingly low given the forcible, often permanent eviction of hundreds of thousands of families from their homes. Croatia's blitzkrieg in the Krajina will generate yet more evacuations, as nearly 200,000 new Serb refugees help push Muslims and Croats out of the remaining Serb enclaves in Bosnia.

European countries that have less space than the U.S., fewer resources and greater xenophobia have taken in many more Bosnians than this country has. Germany, still reeling from vast reunification costs, has sheltered more than 180,000 since 1992. But Europe's patience with refugees has worn thin. To qualify for entry in most countries now, a refugee must produce travel documents and prove individual rather than group persecution. Even more worrisome, first-asylum countries such as Croatia threaten to withhold even temporary protection unless others, particularly the U.S., relieve the pressure by accepting more refugees. History teaches a grim lesson: similar pressures led to the deadly "pushbacks" of Asian boat people in the late 1970s and 1980s, which declined only when the U.S. and others agreed to take in more of them.

America should open its doors again. Our capacity to absorb refugees has grown as the decades-old Indochinese and Amerasian programs have wound down. Yet Washington, impelled by an anti-immigrant mood, is moving to reduce all admissions, including refugees. During World War II, the U.S. and Europe closed their doors just as refugee flows from Hitler's genocidal policies increased. Today we risk shaming ourselves once more.

Why have we taken in so few Bosnians? The reasons are less legal than political. Under the 1980 Refugee Act, the president, after consulting with congressional committees, publishes an overall refugee ceiling for the next year (110,000 in 1995) and sub-ceilings broken down by region and sometimes by country. Although these ceilings are not enforceable legal promises to take in a fixed number, they do indicate our intention to accept that many if conditions on the ground warrant it.

Instead of creating a separate allocation for Bosnians, the administration folded them into an overall regional ceiling for Eastern Europe and the former Soviet Union—48,000 this year, which the administration now proposes reducing to 45,000. This forces Bosnians to compete with other groups whose greater influence in Congress has won them a special, relaxed legal definition of "refugee." These groups, mainly Soviet Jews and evangelical Christians, take the lion's share of slots even though few face the violence so common in Bosnia

Such favoritism condemns many Bosnians to great suffering or even death; it also discredits the integrity of our refugee policy, bolstering the arguments of Senator Alan Simpson and others who cite its unfairness as further reason to reduce refugee numbers.

The State Department's 1993 decision to delegate refugee resettlement gatekeeping in Bosnia to the United Nations High Commissioner on Refugees (UNHCR) has provided America an excuse for inaction. UNHCR has an impossible mission. It depends for its funding and operational support on the very states that seem determined to deny that a refugee emergency warranting resettlement exists. Unwilling to bite the hands that feed it, the agency refers too few Bosnians to the U.S. Last year, it stated that only 35,000 refugees worldwide truly need resettlement—which Simpson quickly cited as a reason to reduce refugee admissions. But the fall of Srebrenica and Zepa has shaken UNHCR; it now says many more Bosnian resettlement slots are required.

UNHCR's reasons for not referring more Bosnian refugees are inconsistent and implausible. Slow to certify the extent of Serbian ethnic cleansing, UNHCR then argued that resettling Bosnians would help the Serbs achieve this goal. Noting that most Bosnians want to remain near their homes, UNHCR elides the tragic fact that many of these same people know that they must leave anyway, perhaps never to return. Helping Bosnians return to their homes is obviously the best remedy—if it is safe. But for many, whose choice is to languish indefinitely in squalid camps or be resettled elsewhere, this option has vanished.

UNHCR also claims that most Bosnian refugees (those without family in the U.S.) do not meet its key criterion for referral for resettlement here: vulnerability. Omar Stupac, a physician and former high-ranking officer in the Bosnian army, knows how narrowly UNHCR can define vulnerability. When Croatian forces invaded his city in 1993 and imprisoned his mother, Stupac went into hiding. Finding identity papers on a dead Croat soldier, Stupac reached the Bosnian Embassy in Zagreb, which issued him a passport. With no family in the U.S., he had to convince UNHCR officials in Zagreb that he was vulnerable to persecution. UNHCR, insisting that he was safe there, rejected his claim. When Stupac left UNHCR's office, Croat soldiers arrested him, transporting him and thousands of other Bosnians to a holding area. Stupac managed to escape, beginning a tortuous journey through Eastern Europe, North Africa and Italy, where the U.S. finally agreed to grant him the refugee status UNHCR had denied. He now lives, safely, and like most Bosnians in the U.S., self-sufficiently, in Queens.

Divided among themselves, political leaders here and in Europe have rejected decisive action on Bosnia. Reasonable people can and do differ about whether they are right. This policy impasse, however, should make the resettlement issue easier, not harder. That we have resolved to do little in Bosnia is reason to do more in the U.S. We must do what we can *here* for those paying a fearful price for our inability to do more *there*. This is a propitious time for change: current law authorizes more admissions in a refugee emergency such as Bosnia, the State Department can readily redefine UNHCR's criteria, and negotiations over next year's target figures have begun. (The administration just proposed accepting up to 15,000 Bosnians but within a lower regional ceiling.) We did not avert the shipwreck, but we do have life jackets to spare.

Protecting the Rights of Refugees and the
Internally Displaced Victims of Violence in the
Former Yugoslavia -- in Any Potential Peace Agreement

Testimony by

Robert P. DeVecchi
President - International Rescue Committee

before

The House Committee on International Relations
Ben Gilman, Chair

at Hearing:

Human Rights, Refugees and War Crimes: Prospect for Peace in Bosnia

November 15, 1995

Mr. Chairman:

I am grateful for this opportunity to appear before this Committee to comment on the current Bosnia peace talks and their possible impact on refugees and those internally displaced by the conflict in the former Yugoslavia

For the past three years, the International Rescue Committee has been deeply involved in providing humanitarian aid, relief and assistance to the victims of this conflagration, regardless of their nationality or ethnicity. The IRC has maintained a major presence in Croatia, in Serbia and in all areas of Bosnia, with a primary focus on the immediate needs of civilians caught up in the fighting as well as the longer term needs in mental health and counseling. In addition, IRC has been the major implementing U.S. organization responsible for the interviewing, documenting and processing of Bosnian refugees in Croatia seeking admission to the United States as refugees.

Among the topics being discussed at Wright-Patterson Air Force Base in Dayton is the refugee question, including their right of return or compensation for destroyed homes. These are important matters which are of significance both from a political-demographic perspective and from a socio-economic perspective.

There is another dimension, however, which I hope and trust will not be lost sight of as a peace is painstakingly negotiated. I am referring here to the basic human rights of the individuals concerned, be they refugees or internally displaced. It should not, and it indeed must not be assumed that large numbers of civilian victims of ethnic cleansing should be forced either to return to the

houses from which they were driven or moved involuntarily to new sites. There must be consideration for the rights of these individuals to have a say in their own destinies, as guaranteed under the Universal Declaration of Human Rights and as provided for in the 1953 United Nations High Commissioner for Refugees' Convention on Refugees and its 1967 Protocol.

Mr. Chairman, permit me to elaborate and to be specific:

1. There are an estimated 630,000 refugees who have fled the conflict in the former Yugoslavia and are presently in western Europe. Their right to asylum or temporary protection in the countries of Europe is increasingly in doubt. We hear of Bosnians, for example, in Austria who are being repatriated by force, against their will, to their homeland, with little or no consideration of what it is they have, if indeed they have anything, to go back to. The United Nations High Commissioner for Refugees should do all in its power to assure that UNHCR's protection mandate is exercised on behalf of these refugees.

2. In comparing the European response to the refugees from the Former Yugoslavia, the United States response in terms of offering permanent refugee resettlement has been cursory at best. Less than 20,000 Bosnian refugees have been admitted to this country over the past three years, in spite of the urging of the UNCHR and other refugee advocacy organizations that this number be greatly expanded, to meet the need.

3. Croatia has been the country of first asylum for some 650,000 refugees from Bosnia. This group includes ethnic Muslims, ethnic Croats and mixed marriage families. In general, the Croatian response to the refugee influx has been commendable. The vast majority of the refugees have been locally integrated, given temporary lodging in Croatian homes and collective centers.

It is all the more of concern, therefore, that the Croatian authorities speak more and more about the unilateral return of those to whom it has offered asylum as the prospects for peace grow stronger. It is equally of concern that the Croatian authorities have become more and more restrictive about granting asylum to newly created refugees, such as those Bosnian Muslim families who continue to be "ethnically cleansed" from the Banja Luka area. The fundamental principles of "non-refoulement" (no forced or involuntary repatriation), of the right to seek asylum and the obligation to provide protection to refugees must be reinforced and adhered to.

There is as well the residual ethnic Serb population in Croatia, primarily in the Krajina area, whose rights must be respected. There have been disturbing reports of serious human rights violations being committed against this population. And of far greater complexity is the issue of compensation for the thousands of ethnic Serbs who fled the Krajina, leaving behind land, homes and possessions.

4. In the Bosnian area which falls under the mandate of the Federation (Bosnian Muslim and Bosnian Croat), the populations of primary concern are those who have been internally displaced by

the fighting. They have not crossed a recognized international frontier, which would make them refugees. Rather, they are displaced within the boundaries of their own country.

Making the Federation work, building towards a civil society and nurturing democratic institutions are imposing and daunting challenges. In this regard, the divided city of Mostar is the most visible and vivid example. To date it has been estimated that the European Community has invested \$300,000,000 to re-integrate Mostar. And yet the city remains essentially divided, with mutual suspicions and antagonisms between ethnic Croat and Bosnian Muslim factions still at the flash point.

5. The ethnic Serb area of Bosnia, (the so-called Republic Srbska) presents a whole new set of challenges. Over the past months, this area has seen the arrival of over 170,000 newly created refugees, largely from the Krajina area and, more recently, from the Sanski Most area. These ethnic Serbs have sought and found temporary lodgings in Serb surroundings, but there conditions are by no means of sufficient stability to say they will not need continued external humanitarian aid.

A tragic, but real outcome of this influx of ethnic Serb refugees into urban areas such as Banja Luka has been the increasingly brutal expulsion of the last remaining Muslim families from the area -- as much out of ethnic cleansing fury as to make available shelter and provide homes for the newly arriving.

6. Serbia itself has had to absorb over 150,000 ethnic Serbs, primarily from the Krajina, as well as from areas of Bosnia recently over-run by Federation forces. The majority of these refugees are in the Vojvodina area of Serbia. In large part because of the embargo, there is a chronic shortage of materials for shelter, clothing, food and medicines. As it becomes increasingly clear that most, if not all, of these refugees will most likely not return to their homelands, provision must be made for their permanent resettlement in Serbia.

In the overview of the current refugee and internally displaced persons situation in these areas, it is clear that things are in a state of flux and conditions could change overnight. For example, a breakdown of the recently concluded agreement regarding Vukovar and the surrounding areas of Eastern Slovenia could trigger a whole new conflagration. This, in turn, could bring renewed challenges to Dubrovnik, to Sarajevo and to all current areas of confrontation.

Nonetheless, there are several over-riding principles which we need to keep in mind as the negotiations for peace proceed. Let me conclude by spelling out the main ones:

1. The basic principles of asylum, protection and non-refoulement must be adhered to.
2. Precipitous moves by countries of asylum to return refugees against their will must be opposed.
3. Resettlement as a durable solution option for a number of refugee victims of the war must be kept open and, preferably, exercised with both generosity and compassion.

4 The assumption that persons driven from their homes by acts of violence can, and should, return to their homes (even if they no longer exist) must be questioned. The scars left by acts of violence -- assassination, murder, rape, torture, burning and looting, can be so deep that to expect survivors to return to the scene of the crime is unconscionable.

There are precedents here. In the immediate post-war years, victims of Nazi oppression, especially Jews, who were displaced in Western Europe were not required to go back to Germany. In more recent years, similar conclusions were reached regarding Cambodian refugees who had fled the Khmer Rouge and found refuge in Thailand.

5. In the understandable impetus to reach a peace agreement, the refugee and displaced populations must not be viewed as either political pawns or potential voters for one or the other faction. Rather, they should be regarded as individuals, each with his or her uniqueness respected, and upheld. There may well be significant transfers of populations in the former Yugoslavia. These have happened before in the stormy history of the Balkans. But attention and care need to be paid to protect the individual human rights of each of every persons involved.

Thank you, Mr. Chairman.

November 15, 1995

House International Relations Committee

Peace, Justice and Support for the Yugoslavia War Crimes Tribunal

Testimony of

Thomas S. Warrick

**Special Counsel,
Coalition for International Justice**

November 15, 1995

10:00 a.m.

Rayburn House Office Building, Room 2172

House International Relations Committee

- Is It Important To Enforce the Law?
- U.S. National Security Interests
- Effect of Allowing Karadzic and Mladic to Live in Comfortable Retirement
- Security Council Sanctions
- Recommendations

Is It Important To Enforce the Law?

■ Publicity Works

- Exposing the camps.
- Systematic sexual assault.

■ Never Again: The Moral and Ethical Imperative

- "After all, who remembers the Armenians?"

■ Enforce the Geneva Conventions: Protect Future U.S. Prisoners of War

- Leaders of rogue states need to hear the message, "Do that, and you will be pursued to the ends of the earth."
- If there is no punishment for individuals responsible, the lesson learned will be "Don't lose—winners don't get punished."

■ U.S. National Security: We Need a Strategy, Not a Policy

Effect of International Press Attention on Detention Camps in Northwest Bosnia August 1992



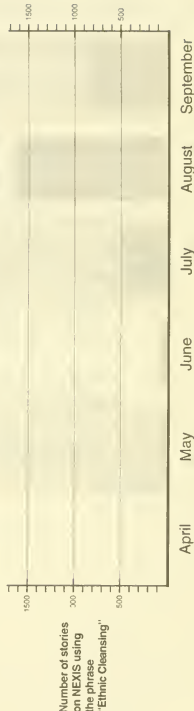
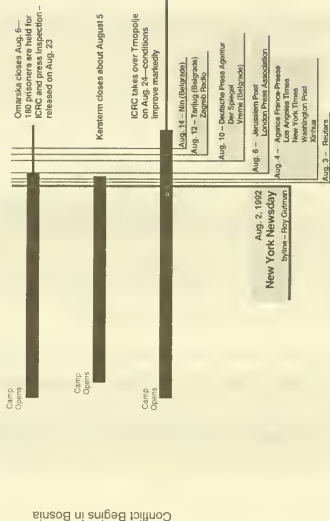
Prisoners in front of the Keraterm detention camp, August 1992

April May June July August September

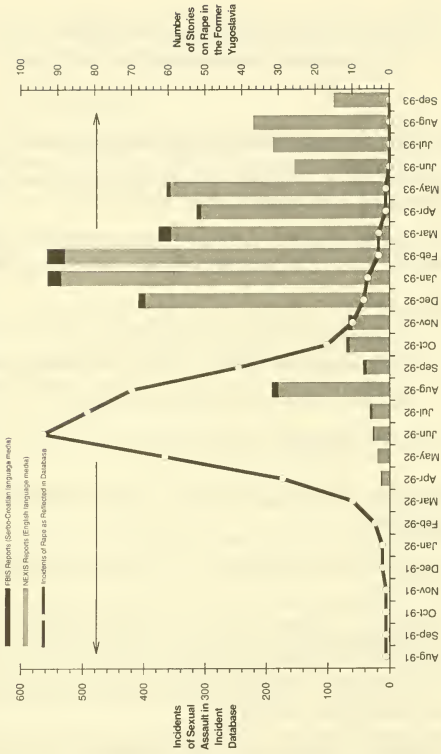
Omarska
4000 killed

Keraterm
1000 killed

Trnopolje
400 killed



Timing of Incidents of Sexual Assault and Media Coverage of Systematic Rape Story



U.S. National Security: We Need a Strategy, Not a Policy

■ What the Commission of Experts Learned

- First thing we learned: the horrors of this war were caused by unsettled scores from the last one.
- Atrocities weren't due to centuries of ethnic hatred—individual soldiers had to be motivated to rape, torture and kill.
- Motivation:
 - Unsettled scores from World War II:
"You must understand . . . we have 500,000 coming to us!"
 - A "first strike" propaganda campaign.
- Key: Breaking the cycle of violence.

■ Strategy: Build a Lasting Peace, Not an 18-Month Cease-fire

- Justice—and a reckoning—are the key to breaking the cycle of violence.
- All agree: A policy based on obtaining signatures on a piece of paper alone won't work—only performance matters.
- Somalia lesson: Before U.S. forces go in, there must be a chance for peace when we leave.
- Yesterday's victims in Yugoslavia heard nothing after World War II. Today's victims must see justice done.

Effect of Allowing Karadzic and Mladic to Live in Comfortable Retirement

■ Belgrade *Nin* Report

- A Belgrade newspaper, *Nin*, has reported that there is, or may be, an agreement that Karadzic and Mladic, indicted for Genocide, Crimes Against Humanity, and war crimes, can resign and not be turned over for trial. Instead, they would be allowed to live in Belgrade.

■ This Could Be Done Invidiously Through the Bosnian Federal System

- Under the old Yugoslav system—the opposite of the American system—republic constitutions prevailed over the federal constitution.
- This provision could be tucked away in the constitution of the Bosnian Serb-controlled region, and not be part of the constitution of the Republic of Bosnia-Herzegovina.
- Thus, assurances that there is no such provision in the Republic's constitution are not enough. The Devil is in the details.

■ This Would Be Illegal Under International Law

- E.g., Chapter VII of the United Nations Charter, the Genocide Convention, the Geneva Conventions, and Customary International Law

■ Justice Goldstone Will Consider Resigning

- Justice Goldstone said yesterday that “if a permanent member of the Security Council” agrees to let Karadzic and Mladic live in comfortable retirement in Belgrade he would “question whether it was worthwhile pursuing the work” (Reuters, 11/14, 10:52 EST).
- Knowing many in the Prosecutor's office, I can attest that mass resignations are a virtual certainty if this happens.

■ Such an Agreement Would Violate the Most Fundamental American Principles

- This calls for prompt communication of the views of this Committee to the President.

RTw 11/14 1052 U.N. prosecutor warns against Bosnia amnesties

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By Ian Geoghegan

THE HAGUE, Nov 14 (Reuter) - U.N. prosecutor Richard Goldstone issued a strong warning on Tuesday against any peace deal for the former Yugoslavia that would shield suspected war criminals from trial.

He told a press lunch in the Hague that any amnesty for the Bosnian Serb President Radovan Karadzic and military chief Ratko Mladic would be anathema and would make him consider resigning.

"What politicians have the moral, legal or political right to forgive people charged with genocide and crimes against humanity -- for the deaths of tens of thousands of people -- without consulting the victims? I just find it abhorrent."

The U.N. Tribunal for former Yugoslavia, set up in 1993, has cleared the way for the first war crimes trial in 50 years to begin, that of a Bosnian Serb accused of torture and murder.

Since peace talks began in Dayton, Ohio almost two weeks ago, the war crimes issue has been one of the most contentious, threatening to derail the negotiations.

While Bosnia's government has demanded that Karadzic and Mladic be deposed and tried for war crimes, Goldstone said he had heard reports from Belgrade of suggestions that the two may be granted some kind of immunity in exchange for a peace deal.

Goldstone said every member of the United Nations had a legal obligation to comply with the war crimes tribunal and surrender suspects for trial.

He said he had been given assurances by the United States that the indictments issued by the tribunal were not negotiable and would not be bargained away in Ohio.

"I must accept that those assurances have been given seriously and that the United States will not be a party to any trading or trade-offs," he said.

"The very issue of politicians forgiving the crimes that we've indicted people of having committed is really quite an amazing thought. It shocks me that people talk about it seriously.

"Any suggestion there might be a term in a peace agreement that the Federal Republic of Yugoslavia might not be obliged to hand over Karadzic and Mladic would be contrary to international law, contrary to the U.N. Charter and would be anathema and objectionable to the tribunal," he said.

"Certainly, if a permanent member of the Security Council or the international community was an active party to that, then all of us at the tribunal would question whether it was worthwhile pursuing the work."

REUTER

Security Council Sanctions

- Under the Tribunal's Statute, the U.N. Security Council Can Impose Sanctions on Countries That Fail To Surrender Indicted Suspects
- The ICTY Will Shortly Ask for Sanctions Against Those Who Have Failed To Surrender Indicted Suspects
- States That Harbor War Criminals Should Have To Comply Before Key Sanctions Are Lifted—a Mere Promise To Comply Is Meaningless Here
 - Track record of broken agreements is too long already.
- Of Powerful Effect Would Be Legislation To Require the United States Directors of International Financial Institutions To Oppose, and Vote Against, Any Assistance To Countries That Harbor Indicted War Criminals
 - The Congress has already adopted similar legislation with respect to Iran and Iraq.
 - Likely to be a powerful weapon in securing compliance for both the Yugoslavia and Rwanda war crimes tribunal.

Recommendations for Success

- **Preserve the Independence of the Prosecutor**
- **Patience and Perseverance**
- **Adequate Resources**
 - Additional U.S. voluntary contributions.
 - Additional support for U.S. information sharing.
- **Political Support**

Amnesty International Testimony

Human Rights, Refugees and War Crimes: The Future of Peace in Bosnia

Before the House Committee on International Relations



Presented by

James O'Dea

Director, Washington, Office,

Amnesty International USA

November 15, 1995

PREPARED STATEMENT OF JAMES O'DEA
DIRECTOR, WASHINGTON OFFICE, AMNESTY INTERNATIONAL, USA
COMMITTEE ON INTERNATIONAL RELATIONS
US HOUSE OF REPRESENTATIVES WASHINGTON, DC
NOVEMBER 15, 1995

Mr. Chairman, members of the Committee, thank you for calling this important hearing. My testimony has two parts: first, some commentary concerning the current human rights crisis in the former Yugoslavia as peace accords evolve; secondly, recommendations concerning the human rights framework of the peace agreement.

Amnesty International is an organization which is well qualified to discuss human rights issues in the former Yugoslavia. We may never have a fully comprehensive accounting of all the atrocities that have been committed since 1991 but there is a substantial body of information that records the worst human rights violations in Europe since World War II. We are not qualified to discuss the territorial claims or the viability of proposed divisions of land between the Federal Republic of Yugoslavia, Croatia and Bosnia-Herzegovina, or within Bosnia-Herzegovina itself.

But the redrawing of maps cannot itself bring about an end to the human rights abuses nor provide adequate redress for the thousands of victims. Since 1991 tens of thousands have been killed, more than 25,000 are missing or "disappeared" and over two million are refugees or displaced persons. The last three months has seen an intensification of killings, expulsions and forcible abductions following the collapse of Srebrenica, the military action in the Krajina and in Banja Luka and its environs. Yet whatever the ultimate solution that is reached at the peace negotiations, all governments of the former Yugoslavia will

still have to base their future development on respect for human rights in a region which is diverse in its nationalities, ethnic groups or religions.

If peace is to be restored fundamental rights will have to be restored. That will mean for hundreds of thousands of Serbs, Croats and Bosnia-Herzegovinan Moslems the right to return to their homes with full guarantees of security of person. It means the right to live in one's own house on one's own land without fear or threat of being slaughtered, expelled, detained or persecuted because of one's perceived nationality, ethnic origin or religion. It will have to mean the right to freedom of movement, freedom of religion, freedom of assembly and all the other rights enshrined in the international Bill of Rights: the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights.

However the map is drawn, minorities will have to be protected. The Federal Republic of Yugoslavia and the Republic of Croatia may have come to an agreement to resolve their dispute over eastern Slavonia without recourse to a war, but huge challenges remain. For example, Croatian President, Franjo Tudjman must now ensure that the sizable Serb minority in Eastern Slavonia is fully protected. Given the atrocities that were committed by Croats in the Krajina, President Tudjman will have to take swift action to gain the confidence of minorities throughout Croatia. President Izetbegovic will have to ensure that there are not violent acts of revenge committed against Bosnian Serbs in Bosnia-Herzegovina.

Civil society cannot be achieved by a settlement between the warring parties that does not seek to transform the pervasive climate of impunity and intolerance that now exists. Maps cannot provide protection against human rights violations when government, military and paramilitary leaders draw their support from instilling hatred and fear of other ethnic and religious groups. The Bosnian

Serbs who are supportive of a multi-ethnic society may only have an opportunity to express their views if Radovan Karadzic and General Ratko Mladic, both indicted by the International Tribunal for the Former Yugoslavia, are arrested. They have instilled such terror that those who might wish to oppose their views are effectively silenced.

Immediate steps needed are:

The International Committee of the Red Cross must be allowed immediate access to all places of detention in Bosnia-Herzegovina.

All non-combatants should be released immediately.

All other detainees should be held in accordance with the Geneva Conventions until an orderly exchange of POWs is arranged.

War crimes investigators should be allowed unrestricted access throughout the former Yugoslavia. It is urgent that they be allowed access to areas where numerous atrocities are said to have occurred after the fall of Srebrenica since press reports have indicated efforts by the Bosnian Serb forces to destroy evidence of war crimes.

An urgent investigation into the fate of 25,000 people who are "disappeared" or missing in the former Yugoslavia since 1991 is needed.

Ethnic cleansing should not be replaced with "ethnic engineering" and the forcible placement of ethnic populations in certain areas. UNHCR has called for a well-organized and voluntary program of return. UNHCR envisages a three stage process for the return of internally displaced persons and refugees: 1.2

million in Bosnia-Herzegovina, 820,000 in neighboring republics and an estimated 7000,000 refugees in Europe (UNHCR figures).

Other Urgent Steps to Bring an End to the Violations:

In order to ensure that human rights violations in Bosnia-Herzegovina are brought to an end there must be no military assistance from the government of the Federal Republic of Yugoslavia to human rights violators and indicted war criminals in Bosnia-Herzegovina. Indicted war criminals such as General Ratko Mladic and Radovan Karadzic should not be allowed to travel freely in the Federal Republic of Yugoslavia where they have been repeatedly sighted in the last year. They were even present at a meeting between Richard Holbrooke and President Milosevic. The government of President Milosevic has an obligation to arrest them and turn them over to the UN Tribunal on the Former Yugoslavia.

Furthermore there have been accusations regarding the involvement of paramilitaries from the FRY and members of the Yugoslav regular army in atrocities committed in Bosnia-Herzegovina in the last year. President Milosevic should order an immediate independent investigation into these charges and prosecute those found to be involved in human rights violations. It is especially important that the government of the FRY prevent paramilitaries under the control of Zeljko Raznatovic, a k a Arkan from crossing into Bosnia-Herzegovina to commit violations.

The government of the FRY must also ensure that all persecution and harassment of ethnic Albanians in Kosovo be stopped.

Major human rights violations occurred in the Krajina region following the military action by the Croatian army in early August. Those responsible for killings and

physical violence against ethnic Serbs must be brought to justice. Croatian citizens of Serbian origin who fled the Krajina in the tens of thousands must have clear proof that justice will be done before they can feel secure enough to return. The government of Croatia has indicated that those who fled and who were expelled from the Krajina have the right to return and the right to compensation for property destroyed: this promise must be fulfilled.

Finally, it is urgent that the U.S. Government provide information in its possession in an effective and timely way to help prevent human rights violations. There has been much discussion in the press about US satellite and other aerial photographic material that was available before, during and after the massacres following the Bosnian Serb assault on Srebrenica. There have also been reports that the US has other intelligence gathering activities and that it monitors sensitive communications between Belgrade and Pale. It is regrettable that this capacity has not been used to save lives. Justice Goldstone, the Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia has complained to the U.S. government about the withholding of crucial U.S. intelligence which could provide important information or evidence for the prosecution of war criminals. Given U.S. information and knowledge about actions in Bosnia-Herzegovina and Croatia which resulted in massive human rights violations, why did it not do more to prevent human rights violations? Some might suggest that it is cynical to send Assistant Secretary Shattuck to the region to condemn the violations after they occurred when the U.S. government might have raised its voice beforehand.

Human Rights in the Framework of the Peace Agreement

The peace agreement should require Bosnia-Herzegovina-Herzegovina to implement its human rights treaty commitments and other human rights

standards, including United Nations (UN) criminal justice standards, at all levels of government and in all parts of the country.

There can be no lasting peace without justice. The peace agreement should provide that national authorities have the power and freedom of movement to investigate any violations of human rights and humanitarian law throughout Bosnia-Herzegovina and to take effective action to stop them, including the transfer of cases from lower-level courts to national courts if trials in such cases are likely to be unfair or shams. There should be no amnesties for perpetrators of such violations which would have the effect of preventing the emergence of the truth and subsequent accountability before the law. All parties should commit themselves to bring those responsible for such violations to justice in fair trials in national courts which exclude the death penalty.

The parties should also agree to implement existing legislation providing for cooperation with the International Criminal Tribunal for the Former Yugoslavia. The Republic of Croatia and the Federal Republic of Yugoslavia should permit the Tribunal to have unrestricted access to all parts of their territories and to evidence and witnesses, and should extradite suspects to Bosnia-Herzegovina or transfer them to the Tribunal.

The peace agreement should provide for the establishment of independent and impartial judicial systems at all levels. The international community should agree to provide adequate resources and training to ensure that the entire judicial system (judges, prosecutors, lawyers, law enforcement officials and prison officials) is able to operate independently, impartially and effectively as required by international standards. The police and judicial authorities at all levels should be reconstructed and retrained to the extent necessary to guarantee that they operate independently, impartially and according to international human rights exclude those responsible for human rights violations.

No peace agreement will be lasting unless it ensures that national institutions are established to implement and monitor human rights. Three such institutions, the OSCE-sponsored Ombudsmen (as established in the Federation of Bosnia-Herzegovina), the Human Rights Commission and the Commission for Displaced Persons, are described below. Amnesty International believes that the Ombudsman institution should be extended to include the whole territory of Bosnia-Herzegovina. An effective division of responsibilities would then be for the Ombudsmen to focus on monitoring implementation of human rights commitments and the Human Rights Commission to focus on long-term institution building. Both bodies should press all levels of government, including educational institutions, to integrate human rights into their work.

The peace agreement should guarantee that all persons who were forcibly exiled or displaced from their homes are able to return promptly and safely to their homes. Amnesty International welcomes the recognition by all parties of the fundamental right of all persons who were forcibly exiled or displaced to return to their homes. Amnesty International calls upon all parties to ensure that this right is given substance by ensuring that the right can be freely and effectively exercised. People who have been forcibly expelled or displaced should not feel that there is no other option than to accept compensation. Since many houses have been destroyed as punishment, people should not only be able to return to their homes, but should also be entitled to obtain full and fair compensation for such destruction to ensure that the right to return is not an illusory one.

Effective implementation of the peace agreement

In light of the enormous scale of the monitoring operation envisaged in the Agreed Basic Principles adopted on 8 September 1995 (UN Doc. S/1995/780), it will be essential for the OSCE to develop a joint operation with the UN, perhaps under the supervision of the UN High Commissioner for Human Rights, and other intergovernmental organizations, with a clear division of responsibilities. Amnesty International's 15-Point Program for Implementing Human Rights in Peace-keeping Operations could be the starting point in developing any such joint international civilian monitoring presence in Bosnia-Herzegovina and could be a guide for any multinational military presence. Copies of this program are being provided for members of this committee today. Amnesty International believes that the Office for Democratic Institutions and Human Rights (ODIHR) based in Warsaw should play a leading role in developing and implementing the OSCE role.

Both the OSCE and other civilian monitoring operations and any multinational military force with responsibility for enforcing the peace agreement should report regularly and frequently to the UN Security Council and OSCE Chairman-in-Office and Permanent Council concerning their activities. Such reporting should be public to ensure maximum impact.

The civilian monitoring presence should have adequate resources and powers in both urban and rural areas throughout Bosnia-Herzegovina with full access to all authorities and complete freedom of movement, including unrestricted access to places of detention. It should also have power to investigate individual cases and to intervene with the authorities to seek action to protect individuals and provide remedies to victims and families.

The experienced and knowledgeable staff in existing international civilian monitoring operations such as the UN civilian police (CIVPOLs), UN High Commissioner for Refugees (UNHCR) protection officers and European Union (EU) monitors, should be incorporated into any international civilian monitoring presence in Bosnia-Herzegovina.

Human rights action teams should be established along the lines of the teams organized by the UN Peacekeeping force in Croatia. Such teams could consist of a team leader and include personnel drawn from the OSCE, the UN, the EU and the Council of Europe. They should include women with experience in dealing with the victims of rape and sexual abuse and have other specialist staff available according to need. Military personnel in the multinational force should be instructed to cooperate with these teams and pass information to them in the same way as UN personnel are currently required to pass information to the UN Special Rapporteur on former Yugoslavia (GA Res. 47/147). The teams would coordinate their work and share information, but would have independent projects. All members of the civilian monitoring presence should be given adequate training human rights and humanitarian law.

Any multinational military force in Bosnia-Herzegovina should comply with UN law enforcement standards, in particular the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials, and be properly trained in such standards before they are deployed. The International Criminal Tribunal for the Former Yugoslavia should be able to request the multinational force, when that force is carrying out law enforcement responsibilities, to execute search or arrest warrants, to safeguard evidence such as grave sites and to protect witnesses. The force should have the power to intervene with the authorities to seek action to protect individuals and should report through explicit and proper channels, including to

the International Criminal Tribunal for the Former Yugoslavia, any human rights violations they receive.

Even after the multinational military force is ultimately withdrawn from Bosnia-Herzegovina the peace agreement should ensure that the civilian monitoring presence is maintained at an appropriate level for sufficient time to permit the establishment of national institutions which can effectively protect and promote human rights.

The OSCE has a particularly important role to play in ensuring the success of the Ombudsmen institution. The parties and the OSCE should commit themselves to provide sufficient financial and political support for the Ombudsmen institution sponsored by the OSCE to ensure its independence, impartiality and effectiveness. The Ombudsmen need to have deputies in all areas of Bosnia-Herzegovina to receive complaints and investigate reports of human rights violations.

The Commission for Displaced Persons to be established in accordance with the Agreed Basic Principles to enforce, with assistance from international entities, the obligations to enable displaced persons "to repossess their homes or receive just compensation" should have strong guarantees of its independence and impartiality and include persons with knowledge of international human rights law. Its mandate should include monitoring the safety of displaced persons who return to their homes, particularly in areas which are under the control of an ethnic group other than their own, and the power to take appropriate action to protect their safety.

Amnesty International welcomes the commitment in the 8 September 1995 agreement to establish a national Human Rights Commission to enforce human rights. The agreement should contain effective guarantees that the commission

will be independent and impartial, possess adequate resources and powers, include members with international human rights knowledge and operate consistently with international standards for commissions and investigations. These standards include the UN Principles Relating to the Status of National Institutions (annexed to UN Commission on Human Rights Resolution 1992/54, adopted on 3 March 1992), the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the UN Declaration on the Protection of All Persons from Enforced Disappearance.

The details of the mandate of the Human Rights Commission still need to be worked out, but an important function should be the long-term development of national human rights institutions. Consideration should be given to including members appointed by the OSCE and Council of Europe, at least in the initial stages of its existence.

Amnesty International welcomes the agreement of the parties to abide by the Commission's decisions, but the organization believes that it is essential that none of the parties should be able to block investigations or decisions by the Commission and recommends that the Commission have an effective mechanism for reaching prompt decisions, independent of the system of arbitration envisaged for the solution of disputes concerning the agreement. Such safeguards can help avoid the breakdown of the peace agreement.



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